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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
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Filing Date: June 8, 2022) Case No.: PSH-22-0101
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Issued: September 23, 2022

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX (the “Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (“Adjudicative Guidelines”), I conclude that the Individual should not be granted access authorization.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires possession of a security clearance. The DOE Local Security Office (LSO) discovered concerning information regarding the Individual’s unpaid collection accounts and failure to file or pay federal and state income taxes for several years. The LSO later informed the Individual by letter (“Notification Letter”) that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guideline F of the Adjudicative Guidelines.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review

¹ The regulations define access authorization as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

hearing. At the hearing, the Individual presented the testimony of two witnesses and testified on his own behalf. The Individual submitted ten exhibits, marked Exhibits A through CC.² The LSO submitted nine exhibits, marked Exhibits 1 through 9.³

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline F (Financial Considerations) of the Adjudicative Guidelines as the basis for concern regarding the Individual's eligibility to possess a security clearance. Exhibit (Ex.) 1 at 5. Guideline F provides that that an individual's "[f]ailure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." Adjudicative Guidelines at ¶ 18. Conditions that could raise a security concern include an individual's "history of not meeting financial obligations" and "[f]ailure to file . . . federal, state, or local income tax returns or failure to pay [income tax] as required[.]" *Id.* at ¶ 19(c) and (f). In the SSC, the LSO cited the following information. The Individual did not file federal or state income tax returns for tax years 2015 through 2019. Ex. 1 at 5. He claimed an incorrect marital status for his federal and state income tax filings for tax years 2012 through 2014, and he has not filed amended returns. *Id.* He failed to file his federal and state income tax returns for tax years 1999 through 2011, and he is no longer able to file these returns because too much time has elapsed. *Id.* He estimated that he owes more than \$54,992 for federal and state taxes. *Id.* at 6. He also has four unpaid collection accounts that total \$13,352. *Id.* The above information justifies the LSO's invocation of Guideline F.

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be

² The Individual submitted four post-hearing exhibits that he labeled AA through DD. However, I did not accept exhibit DD because it fell outside of the limited scope that I granted for post-hearing exhibits. Tr. at 86.

³ The LSO's exhibits were combined and submitted in a single, 266-page PDF workbook. Many of the exhibits are marked with page numbering that is inconsistent with their location in the combined workbook. This Decision will cite to the LSO's exhibits by reference to the exhibit and page number within the combined workbook where the information is located as opposed to the page number that may be located on the page itself.

clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* at § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

In 2020, the Individual submitted a Questionnaire for National Security Positions (QNSP) as part of his security clearance process; therein, he disclosed that he failed to file federal and state tax returns for the 2010 tax year. Ex. 9 at 177. During a subsequent investigation conducted by the U.S. Office of Personnel Management (OPM), the Individual disclosed his other tax-related issues to the OPM investigator, which are cited in the SSC and recounted above. Ex. 9 at 192. He reported that “he may not have filed his taxes since 1999 or 2000.” *Id.* He also disclosed that he “likely did not file state or federal taxes from 2005 to 2011 . . . [and] 2015 to present[.]” *Id.* at 193. He explained that he had filed tax returns for tax years 2012, 2013, and 2014; however, he further explained that, in doing so, he incorrectly claimed his marital status as “married” because his marriage, while ceremonial, is not legally recognized. *Id.* at 190, 192. The OPM investigator noted the Individual’s explanations that he “just didn’t pay his taxes and there really isn’t a reason to give as to why not[.]” he knew “he would have some tax bill to pay, so he just avoided it all together and didn’t file[.]” and he was “somewhat afraid to work with the [U.S. Internal Revenue Service (IRS)] and have to deal with a possible garnishing of wages.” *Id.* at 192-93.

The Individual disclosed that he hired a tax relief service in approximately 2010 to assist him in filing tax returns. *Id.* at 193. However, he did not complete the process with them. *Id.* He hired a second tax relief service in 2014 or 2015, but the Individual “couldn’t continue to pay for the service, and he was cut off without copies of any paperwork[.]” which he described as “a mess.” *Id.* At the time of the interview, he was contemplating working with a third financial counseling company. *Id.* at 193-94. He reported his expectation that this third company would assist him in filing his delinquent tax returns. *Id.* at 194.

The Individual also disclosed during the OPM investigation that he had outstanding student loans from 2012. *Id.* at 195. He could not recall whether he had ever made payments on the loans, and he was not aware of the total amount presently due. *Id.* The record includes a January 2022 credit report listing the four student loans cited in the SSC, which total \$13,352 and are in collection status. Ex. 6 at 48-49.

At the hearing, the Individual’s supervisor and the Individual’s sister testified. The supervisor testified that the Individual is trustworthy and “extremely reliable.” Tr. at 13. The sister testified that she has a background and training in tax preparation, and she provided testimony regarding

her effort to assist the Individual in resolving his outstanding state and federal tax returns. *Id.* at 42. She stated that the Individual first contacted her for assistance after 2016 or 2017. *Id.* at 53. However, she did not begin assisting him until late 2021, when she helped him file his return for tax year 2020. *Id.* In early 2022, she volunteered to help him file his delinquent tax returns.⁴ *Id.*

The sister further testified that she and the Individual requested and received the Individual's IRS transcripts in order to determine his past tax debt, but she and the Individual had not yet had the time to work through the transcripts. *Id.* at 48. The Individual's sister explained that IRS transcripts report a zero balance for each tax year until the taxpayer files their return for the corresponding year. *Id.* at 42, 43. She explained that she focused on helping the Individual get "caught up on filing" his outstanding returns. *Id.* at 48. She explained that she filed the Individual's 2019 and 2020 returns, and the Individual received a refund which the IRS credited to the Individual's IRS debt. *Id.* at 49, 52-53, 55.

The Individual testified and blamed his failure to file tax returns prior to 2008 on not understanding the obligation to do so. *Id.* at 16. He stated that, in 2008, he started a family with his now wife and her children from a previous relationship. *Id.* However, there was a dispute with the children's biological father regarding who would be able to claim the children as dependents on their tax return, and "it just like fell apart." *Id.* He explained that his debt increased because he did not receive the benefit of providing for the children, and he did not understand how to remedy the issue. *Id.* at 16-17. In retrospect, he realized that he could have filed his returns with the IRS and let the agency "work that out." *Id.* at 17. He could not recall whether the IRS had ever contacted him regarding his failure to file returns or to inform him of any money he owed. *Id.* at 73. He took responsibility for his lack of recollection at the hearing by stating "that's on me because I don't pay attention." *Id.* at 74. He confirmed that when he timely filed his tax returns for tax year 2013 and 2014, he filed as "married" despite the fact that his marriage was not recognized by the state. *Id.* at 38.

The Individual provided testimony regarding the first company he hired to assist him in resolving his tax issues. He explained that he discovered the company from a radio advertisement. *Id.* at 23. The company informed him that he owed \$54,992 in federal taxes, and he asked them "if they could break it down per year[,]" but they were "dragging it out," and he was not satisfied with their services. *Id.* at 22. Over the course of their relationship, he paid the company approximately \$6,000. *Id.* at 23. He could not identify any benefit provided by the company. *Id.* at 23-24. He also could not recall working with the second tax relief company he referenced during the OPM interview. *Id.* at 78.

The Individual testified that he was unsure of the amount he owed to the IRS. He believed that he would find the answer once his sister "starts filing" his past-due tax returns, which include both federal and state returns. *Id.* at 25, 66. The Individual testified that he communicates with his sister once a month to check on her progress with his tax returns. *Id.* at 70. He testified that he provided the above-referenced IRS transcripts to his sister the day before the hearing. *Id.* 39. He stated that "she has a lot . . . on her plate" and reflected that he could "push her a little more." *Id.* He testified

⁴ The Individual confirmed that he did not ask her to help him complete his delinquent tax returns until early 2022. Tr. at 68.

that he expected her to finish filing his delinquent returns by December 2022. *Id.* He testified that he had received refund checks for his 2020 and 2021 state tax return filings. *Id.* at 64. The record includes a copy of his state income tax rebate check stub and refund check for tax year 2021. Ex. BB; Ex. CC. He testified that he did not owe any outstanding state tax debt based on the fact that he received a refund. Tr. at 65. He explained that, if he did owe thousands of dollars in federal tax liability, he would set up a payment plan with the IRS to satisfy the obligation. *Id.* at 69.

As for the outstanding loans cited in the SSC, the Individual testified that he was not sure whether they were student loans. *Id.* at 29. While he recalled taking out student loans and failing to repay them, he questioned the accuracy of the student loan balances on his credit report. *Id.* at 29-30, 67. The Individual testified that he hired a company in June 2022 to assist him in mitigating issues on his credit report. *Id.* at 27. He testified that the company has since “removed several items off [his] credit report,” such as paid hospital bills, by reaching out to the creditors. *Id.* at 31-32. He expected that the company would evaluate the loans on his credit report and assist him in creating a payment plan to address any outstanding debt that could not be otherwise resolved. *Id.* at 22, 67. He explained that he regularly communicates with the company. *Id.* at 72.

The Individual testified that, going forward, he will live within the means of his salary. *Id.* at 61. He stated that he is focused on providing for his family and putting money aside for his family in case something unexpected happens to him. *Id.* He recognizes that he is a role model for younger people, and he wants to set an example for the younger generations in his community. *Id.* at 62-63. This realization made him decide to reach out to his sister in order to file his outstanding tax returns. *Id.* at 69-70. The Individual also testified that he has been involved in his local community by volunteering his time and effort to make a positive difference. *Id.* at 33. The record includes letters from local community leaders that state the same. Ex. D; Ex. F.

After the hearing, the Individual submitted a copy of a letter from a tax relief company dated March 2013 (“2013 Letter”) and entitled “Investigation Summary.” Ex. AA. The name of the company differs from the organizations previously identified in the record. That letter includes a federal “Tax Liability Summary” that lists the status of his federal tax returns for 2001 through 2011 and provides the “Total Balance Due” for each year. *Id.* The letter indicates that returns had been filed for each listed year. *Id.* It also provides the total balance due as \$39,936.⁵ *Id.* It further indicates that the amounts listed for 2001 through 2006 were in collection status. *Id.*

V. ANALYSIS

A. Guideline F Considerations

Under Guideline F, the following conditions could mitigate security concerns based on financial considerations:

- (a) The behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;

⁵ This number is the total sum of the balances due. *Id.*

- (b) The conditions that resulted in the financial problem were largely beyond the person's control[,] . . . and the individual acted responsibly under the circumstances;
- (c) The individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) The individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) The individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;
- (f) The affluence resulted from a legal source of income; and
- (g) The individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Adjudicative Guidelines at ¶ 20.

I find that none of the above mitigating factors apply to resolve the security concerns in this case. I will first summarily address the clearly inapplicable factors. ¶ 20(b) is inapplicable because there is no evidence that the Individual failed to pay his student loans or file his tax returns for reasons outside of his control. ¶ 20(e) is inapplicable because the Individual did not demonstrate a reasonable basis to dispute his past-due debt. He admitted to both obtaining student loans and failing to repay them. While he has hired a company to investigate whether the amount is accurate, and he may hope to reach a resolution that simply removes the debts, the same does not demonstrate a reasonable basis upon which to dispute their legitimacy. ¶ 20(f) is inapplicable because the security concerns do not involve unexplained affluence. And ¶ 20(g) is inapplicable because the record demonstrates that the Individual has not yet made arrangements with the IRS or state tax authority to file or pay any amount owed because his sister is still in the process of completing and filing his delinquent tax returns, and he therefore cannot be in compliance with any arrangements.

Furthermore, I find that ¶ 20(a) is inapplicable for the following reasons. First, very little time has passed since the Individual began to take significant steps to address his failure to file tax returns. Several delinquent returns remain unfiled,⁶ he has yet to correct the erroneous returns he did file, and he has not yet addressed his outstanding tax debt or resolved his outstanding student loan debt. Second, his conduct has been frequent because his financial issues continued year after year without any significant change in behavior or resolution. Third, his behavior did not occur under such circumstances that it is unlikely to recur. There is no evidence in the record to indicate that his failure to address his student loan debt or his tax obligations resulted from any circumstance other than his decision to avoid addressing the issues. I note that, if the 2013 Letter is accurate, the Individual's admission that he failed to file federal returns for tax years 2001 through 2011 was

⁶ The remaining returns to be filed are for tax years 2015 through 2019. While the Individual's sister testified that she filed the Individual's federal return for tax year 2019, the IRS transcript for that year states the opposite. Ex. A.

incorrect. However, this correction does not alter my finding that ¶ 20(a) does not apply to resolve the security concerns.

Finally, I find that ¶ 20(c) and ¶ 20(d) are inapplicable for the following reasons. While the Individual is presently receiving financial counseling from a service provider, I am concerned by the fact that the record indicates he previously fell victim to a similar service, and there has been no indication that his outstanding student loan debt is presently being resolved or is under control. He is still waiting, after three months, for information regarding this issue. Given the Individual's history, I am not confident he is appropriately addressing the matter. Furthermore, while he is receiving assistance from his sister, who seems competent and willing to help him file his delinquent tax returns, there is no indication that his tax issues are being resolved or are under control because, by the Individual's own account, he has not been very attentive to the process, he and his sister are finding it difficult to find time to work on the problem, and he has not made any arrangements to address any outstanding federal tax debt. For the same reasons, I do not find that the Individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts. Accordingly, I conclude that the Individual has not resolved the Guideline F security concerns

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline F of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the SSC. Accordingly, I have determined that the Individual should not be granted access authorization.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals